



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MOP/156049

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**PRELIMINARY RECITALS**

Pursuant to a petition filed March 11, 2014, under Wis. Stat. §49.45(5), and Wis. Admin. Code §HA 3.03(1), to review a decision by the Waukesha County Health and Human Services in regard to Medical Assistance (MA), a telephonic hearing was held on May 13, 2014.

The issue for determination is whether the agency met its burden of proof to establish an overpayment of MA benefits.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

;

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Kathy Jones

Waukesha County Health and Human Services  
514 Riverview Avenue  
Waukesha, WI 53188

**ADMINISTRATIVE LAW JUDGE:**

Kelly Cochrane  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.
2. On October 24, 2012 petitioner completed a telephonic renewal for MA and FoodShare (FS). See Exhibit 7 and 8.

3. On October 25, 2012 the agency mailed a summary of that renewal to petitioner. See Exhibit 8. The renewal summary indicates, in relevant part, that the petitioner was requesting MA (health care) for his 4 children. The first page of the summary states, "If you see anything in the summary that is not correct, you must contact us. If the information is correct, you must sign and return the enclosed signature page...". Id.
4. On October 25, 2012 the agency also mailed to petitioner a Notice of Action and Proof Needed. See Exhibit 9. It states, "To get or keep BadgerCare Plus benefits you need to take action and provide proof of items by the due date listed below." The Action Needed was a signed application, and the Proof Needed related to petitioner's employment. Id.
5. On October 26, 2012 petitioner and his wife signed the application. Exhibit 10. Handwritten notes on that signature page indicate the first attempt to send it was made on 10/26/12, and the second attempt was made and received on November 13, 2012. Id.; see also Exhibit 7.
6. On November 21, 2012 the agency issued a notice of decision to petitioner stating that he and his wife were not enrolled in BadgerCare, but that his four children were enrolled in the BadgerCare Plus Standard Plan effective November 1, 2012. Exhibit 1. That notice also stated that if petitioner's monthly household income goes over \$5161.66, it needed to be reported to the agency by the 10<sup>th</sup> day of the next month. Id.
7. In January 2013, petitioner's income exceeded the \$5161.66. See Exhibit 2. The increase was not reported to the agency. His children received BadgerCare coverage from November 1, 2012-November 30, 2013.
8. On January 27, 2014 the agency issued a notice of MA overpayment to the petitioner advising him that the agency had found an overpayment against him due to the increase in income effective March 1, 2013-November 30, 2013 in the amount of \$3511.08, which consists of the premiums owed for the four children during that time period. Exhibit 2.

### DISCUSSION

The Department may recover any overpayment of medical assistance (MA) that occurs because of the following:

1. A misstatement or omission of fact by a person supplying information in an application for benefits under this subchapter or s. 49.665 [BadgerCare].
2. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report the receipt of income or assets in an amount that would have affected the recipient's eligibility for benefits.
3. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report any change in the recipient's financial or nonfinancial situation or eligibility characteristics that would have affected the recipient's eligibility for benefits or the recipient's cost-sharing requirements.

Wis. Stat. §49.497; see also *BadgerCare + Eligibility Handbook*, §28.2, available online at <http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm>.

The MA recovery statute clearly provides for recovery of MA when a recipient fails to report income or assets which would affect eligibility. The failure does not have to be intentional. The agency did not suggest that it was making a fraud case here. Even an honest mistake of failing to report income is subject to the recovery rights for the agency.

Petitioner testified that he had called in November 2012 to close his MA for his entire family as he had employment that offered health insurance. However, the preponderance of the evidence before me does

not support such a finding. On October 24, 2012 petitioner completed a telephonic renewal for MA and FoodShare (FS). See Exhibit 7 and 8. On October 25, 2012 the agency mailed a summary of that renewal to petitioner. See Exhibit 8. The renewal summary indicates, in relevant part, that the petitioner was requesting MA (health care) for his 4 children. The first page of the summary states, "If you see anything in the summary that is not correct, you must contact us. If the information is correct, you must sign and return the enclosed signature page...". Id. On October 25, 2012 the agency also mailed to petitioner a Notice of Action and Proof Needed. See Exhibit 9. It states, "To get or keep BadgerCare Plus benefits you need to take action and provide proof of items by the due date listed below." The Action Needed was a signed application, and the Proof Needed related to petitioner's employment. Id. On October 26, 2012 petitioner and his wife signed the application attesting to the veracity of the renewal information. Exhibit 10. Handwritten notes on that signature page indicate the first attempt to send it was made on 10/26/12, and the second attempt was made and received on November 13, 2012. Id.; see also Exhibit 7. On November 21, 2012 the agency issued a notice of decision to petitioner stating that he and his wife were not enrolled in BadgerCare, but that his four children were enrolled in the BadgerCare Plus Standard Plan effective November 1, 2012. Exhibit 1. That notice also stated that if petitioner's monthly household income goes over \$5161.66, it needed to be reported to the agency by the 10<sup>th</sup> day of the next month. Id.

Petitioner testified that he never received any mail from the agency in 2012, but that is difficult to believe when he was responding to the verification requests dated in 2012. See Exhibit 9. Further, the agency testified that there was no returned undeliverable mail from petitioner during that time period. The renewal, the summary and the notice all explained that MA was the program being requested and verified. These pieces of mail were all being sent to the petitioner's address of record at the time, per the renewal summary he completed. I do not find his handwritten, undated notes persuasive to overcome the agency's evidence. Additionally, his testimony was that the conversation to end the MA occurred in November, but that is contradicted by the evidence that it occurred in October.

The evidence provided by the agency for hearing support the amount of the overpayment for the time periods in question. The petitioner has not credibly rebutted that evidence. Therefore, I must find that the county agency correctly seeks to recover these benefits.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

### **CONCLUSIONS OF LAW**

The agency met its burden of proof to establish an overpayment of MA benefits in the amount of \$3511.08.

**THEREFORE, it is**

**ORDERED**

The petition for review herein is dismissed.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative

Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

## **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 28th day of May, 2014

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\sKelly Cochrane  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on May 28, 2014.

Waukesha County Health and Human Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability